

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

HENRY HINTON, JR.

PETITIONER

VS.

CIVIL ACTION NO. 5:16-cv-15(DCB)(MTP)

SHELTON JOLLIFF

DEFENDANT

ORDER

This cause is before the Court on Order of the Fifth Circuit Court of Appeals, directing the Court to determine if the petitioner, Henry Hinton, Jr., filed his notice of appeal within thirty days from entry of judgment. Also before the Court is a Report and Recommendation of Magistrate Judge Michael T. Parker **(docket entry 52)**.

This Court entered its Final Judgment on December 12, 2016; therefore, the final day for filing a timely notice of appeal was January 11, 2017. The certificate of service attached to the petitioner's pro se notice of appeal is dated December 21, 2016, and the notice of appeal is stamped as filed on January 17, 2017.

A prisoner's pro se notice of appeal is timely filed if it is deposited in the correctional institution's mail system on or before the last day for filing. In this case, the petitioner was required to file his notice of appeal on or before January 11, 2017.

Magistrate Judge Michael T. Parker issued an Order (docket entry 49) requesting the parties to show evidence to establish when the petitioner deposited his Notice of Appeal in the institution's

internal mail system. The Affidavit (docket entry 51) of Kathryn McIntyre, Inmate Legal Assistance Program technician at the Mississippi State Penitentiary, states that mail services were rendered to the petitioner on January 5, 2017, for a deadline. The Affidavit also includes a mail log for the plaintiff which reflects that Hinton's Notice of Appeal / Motion to Reconsider was deposited in the correctional institution's mail system for mailing to the Fifth Circuit Court of Appeals and to this Court on January 5, 2017. The petitioner's Response (docket entry 50) also reflects that he placed the mailings with the correctional institution's mail system on January 5, 2017.

On September 11, 2017, Magistrate Judge Parker entered his Report and Recommendation finding that the petitioner delivered his Notice of Appeal to prison officials on January 5, 2017.

The Court therefore finds that the petitioner deposited his Notice of Appeal in the correctional institution's internal mail system on January 5, 2017, and said Notice of Appeal was therefore timely filed. Because the parties are in agreement that the Notice of Appeal was timely filed, the Court finds that they have waived any objections to the Report and Recommendation.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 52**) is ADOPTED as the findings and conclusions of this Court;

FURTHER ORDERED that the Clerk of this Court is directed to return this case to the Fifth Circuit Court of Appeals for further proceedings as may be appropriate.

SO ORDERED, this the 13th day of September, 2017

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE